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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,172	01/25/2002	Edward J. Dalgewicz III	004756.00018	8448

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EXAMINER
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SHORT, PATRICIA A

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 08/13/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/055 172

Applicant(s)

Dalgiewicz et al

Examiner

Shart

Group Art Unit

1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on May 22, 2003
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1 - 24 is/are pending in the application.
- Of the above claim(s) 21, 22, 25 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1 - 20, 23, 24, 26 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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As copies were not provided for the lined through citations on the PTO 1449, these references have not been considered by the examiner. These references were not cited in parent application S.N. 09/453,457.

Claims 21, 22 and 25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

Applicant's election with traverse of Group I in Paper No. 7 is acknowledged. The traversal is on the ground(s) that is no undue burden. This is not found persuasive because separate classification is prima facie evidence of an undue burden. See MPEP 803. Applicant's request to rejoin claims 21, 22 and 25, upon the allowance of elected Group I is noted. Claims 21, 22 and 25 containing all of the limitations of an allowed claim in Group I will be rejoined.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-20, 23, 24 and 26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP '501(Nelsen). The reference teaches blends of polyester, ethylene acrylate copolymer and ethylene glycidyl acrylate copolymer. See last two examples in Table 2 and last example in Table 4. As these examples have good mechanical properties and high heat deflection temperatures, they inherently have a crystallinity of at least about 15%.

The Patel declaration has been considered but is not persuasive for the following reasons. The comparative examples in the declaration are amorphous and have poor heat distortion properties. The example of the reference, as shown in Table 2 have high heat deflection temperatures and good mechanical properties indicating that they are not amorphous. Further, the declaration does not include a comparison with the polybutylene terephthalate example shown in Table 4 of the reference where no filler or reinforcing agent is used.

Claims 1-20, 23, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '501(Nelsen) in view of Brydson, Plastic Materials at page 590. EP '501 is discussed above. Additionally, at page 5, line 3, EP '501 discloses nucleating agents as conventional additives and further indicates at page 6, line 54 that conventional additives were used in the examples. As shown by Plastic Materials at page 590, it is well known in the art that amorphous polyethylene terephthalate injection moldings are of little value and it is conventional to include a nucleating agent in polyethylene terephthalate. In view of Plastics Materials, it would have been obvious to include a nucleating agent as part of the conventional additive in the polyethylene terephthalate compositions of EP '501 in order to promote the crystallization needed to obtain injection molded articles having high heat deflection temperature and good mechanical properties.

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Claims 1-20, 23, 24 and 26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP '454. The reference teaches blends of polyester, ethylene acrylate copolymer and ethylene glycidyl acrylate copolymer. See examples in Table 3. As these examples have good mechanical properties, they inherently have a crystallinity of at least about 15%. The Patel declaration does not include a comparison with the polybutylene terephthalate examples shown in Table 3 of the reference where no filler or reinforcing agent is used.

Claims 1-20, 23, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '454 in view of Brydson, Plastic Materials at page 590. JP '454 is discussed above. Additionally, at page 4, 2nd full paragraph, JP '454 discloses polyethylene terephthalate for use as the polyester and at page 7, line 3, discloses nucleating agents as conventional additives. As shown by Plastic Materials at page 590, it is well known in the art that amorphous polyethylene terephthalate injection moldings are of little value and it is conventional to include a nucleating agent in polyethylene terephthalate. In view of Plastics Materials, it would have been obvious to include a nucleating agent when polyethylene terephthalate is used in the compositions of JP '454 in order to promote the crystallization needed to obtain injection molded articles having good mechanical properties.

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August 7, 2003

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